

January 15, 2002

Via Electronic Mail

Gloria Blue
Executive Secretary
Trade Policy Staff Committee
Office of the U.S. Trade Representative
600 17th Street, NW
Washington, DC 20508

Number of Pages: 9

**THIS DOCUMENT CONTAINS NO
BUSINESS CONFIDENTIAL
INFORMATION**

Attention: Mr. Andrew Stephens
Mr. Willis Martyn
Ms. Carmen Suro-Bredie

Re: Response to Proposals on Potential Remedy Action Under Section 203 of
the Trade Act of 1974 With Regard to Imports of Certain Steel Products

Dear Ms. Blue:

Pursuant to the Federal Register notice dated October 26, 2001, 66 Fed. Reg. 54321 (deadline extended by Federal Register notice dated December 28, 2001, 66 Fed. Reg. 67349), the Association of Flange Manufacturers of India (the "Association") herewith submits its response to comments regarding options for action under Section 203 of the Trade Act of 1974. We also submit answers to certain of the Committee's questions. In addition to a copy of this public document transmitted via electronic mail, the Association has submitted, via first class U.S. mail, one copy of this public submission.

If you have any questions concerning this submission, please contact us.

Respectfully submitted,



Elizabeth C. Hafner
Jennifer Haworth McCandless
Counsel to the Association of Flange
Manufacturers of India

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**BEFORE THE TRADE POLICY STAFF COMMITTEE
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE**

**RESPONSE TO COMMENTS ON OPTIONS
FOR ACTION UNDER SECTION 203 OF
THE TRADE ACT OF 1974 WITH REGARD
TO IMPORTS OF CERTAIN STEEL**

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**RESPONSE TO COMMENTS ON OPTIONS FOR ACTION UNDER
SECTION 203 OF THE TRADE ACT OF 1974**

On Behalf of

The Association of Flange Manufacturers of India

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I. Introduction

On behalf of the Association of Flange Manufacturers of India (the “Association”), we hereby respond to comments filed by certain U.S. producers of flanges and fittings in their January 4, 2002 submission to the Trade Policy Staff Committee (the “Committee”) concerning options for action under Section 203 of the Trade Act of 1974,¹ with regard to imports of flanges, fittings, and tool joints. In addition, the Association also provides answers to the Committee’s questions concerning the treatment of imports under the Generalized System of Preferences (“GSP”) and the level of accumulated inventories of flanges, fittings, and tool joints in the United States.

The Association’s responses to the domestic producers’ comments and answers to the questions of the TPSC are as follows:

- The domestic producers’ assertions that the President should impose a higher tariff than that proposed by the Commission are based on erroneous assertions that do not support the imposition of a tariff rate of 40 percent (or higher).
- The President does not have authority under Section 203(e)(6) to withdraw GSP eligibility currently applied to carbon and alloy steel flanges and fittings. Additionally, such withdrawal could conflict with obligations of the United States under the World Trade Organization (“WTO”).
- The Association has no information on the level of inventories of imported Indian flanges in the United States.

II. The Bases Upon Which the Domestic Producers Assert that the President Should Impose a Higher Tariff Rate on Imports of Flanges and Fittings Is Faulty and Do Not Support the Imposition of a Tariff Rate of Forty Percent

In their comments to the Committee on options for action under Section 203 with regard to imports of carbon and alloy fittings, flanges, and tool joints (collectively

¹ Unless otherwise stated, all references to statutory sections in this submission are to the Trade Act of 1974, as amended.

“Product 22”), certain domestic producers of fittings and flanges (the “domestic producers”) assert that the President should impose a higher tariff on imports of Product 22 than that proposed by the Commission; specifically, they propose an additional tariff of 40 percent or more.² These producers base that assertion on two erroneous assertions: (1) that the evidence of underselling warrants a higher tariff; and (2) that the presence of accumulated inventories of imports supports the imposition of a higher tariff. These assertions are unfounded.

The domestic producers perpetuate the improper reliance on inadequate pricing data as a basis for relief to these industries. On pages 5-6 of their Comments, the domestic producers point to the underselling data as justification for a tariff of 40 percent, or higher.³ As the Association, and others, have repeatedly pointed out, however, the Commission’s pricing data are woefully inadequate for Product 22 because they cover only a single fittings product.⁴ Consequently, those data do not support *any* remedy against imports of Product 22, let alone one as prohibitive as 40 percent.

Moreover, the domestic producers point to margins of underselling by imports from non-NAFTA countries of 25.8 percent and from Mexico of 36.5 percent as a justification for a 40 percent tariff.⁵ In essence, they assert that the President should impose an additional tariff based on a single country’s margin of underselling, and one that is higher than the average of all other countries’ margins of underselling. The

² See Comments of Boltex Mfg. Co., I.P., National Flange and Fitting Co., Inc., and Weldbend Corp. on Actions that the President Should Take Regarding Carbon Steel Flanges, Carbon Steel Butt-Weld Pipe Fittings, and Carbon Steel Butt-Weld Pipe Fitting Forgings, dated January 4, 2002, (“Domestic Industry Comments”).

³ See Domestic Industry Comments at 5-6.

⁴ See Comments on Options for Action on Carbon or Alloy Steel Flanges on Behalf of The Association of Flange Manufacturers of India, dated January 4, 2002, at 3-5.

imposition of an additional tariff based on the highest margin of underselling, however, is not justifiable because the WTO's Agreement on Safeguards (the "Safeguards Agreement") requires that a Member apply safeguard measures "only to the extent necessary to prevent or remedy serious injury and to facilitate adjustment."⁶ The "only to the extent necessary" language does not allow a safeguard measure to be based on the highest underselling margin because such a measure necessarily exceeds the remedy required for all other imports with a lower average margin of underselling. Thus, the underselling margins cited by the domestic producers cannot support a 40 percent tariff increase on Product 22.

The domestic producers also assert that the level of importers' inventories support a tariff of 40 percent or higher.⁷ It should first be noted that importers typically maintain sizable inventories to protect against irregular shipments from overseas. As consumption of these products increased from 1996 to 2001, and from interim 2000 to interim 2001, it cannot be a surprise that inventory levels would increased. But the domestic producers' argument is misleading because it is based on a comparison of importer inventories at the end of June 2001 to inventories at the end of December 1996.⁸ In fact, the more appropriate comparison is between more recent data.⁹ A comparison of inventory levels

⁵ See Domestic Industry Comments at 5-6.

⁶ Safeguards Agreement, Art. 5.1; *see generally, e.g.*, Panel Report *United States—Definitive Safeguard Measures on Imports of Circular Welded Carbon Quality Line Pipe from Korea*, WT/DS202/R (Oct. 29, 2001), paras. 7.78-7.79, 7.111 (finding that the first sentence of Safeguards Agreement Article 5.1 obliges Members applying a safeguard measure to ensure that the measure applied is commensurate with the goals of preventing or remedying serious injury and of facilitating adjustment, and that the measure at issue be applied "only to the extent necessary" to achieve those goals).

⁷ Domestic Industry Comments at 8.

⁸ *Id.*

⁹ *See generally, e.g.*, Appellate Body *Argentina—Safeguard Measures on Imports*

between the end of June 2000 and the end of June 2001 show a more reasonable increase of only 20 percent. More notably, the level of importer inventories to domestic shipments at the end of June 2001 was nearly the lowest in the entire period of investigation.¹⁰ These inventory data do not support the imposition of a tariff rate of 40 percent.

III. The President Does Not Have the Authority to Withdraw GSP Benefits

In their Prehearing Brief to the United States International Trade Commission (the “Commission”), the European flange producers recommended that the Commission consider suspension of duty exemptions currently applied to carbon and alloy steel flanges and fittings under the GSP as an alternative to import restrictive measures.¹¹ We supported this suggestion.

At the Committee’s January 10, 2002 meeting, the Committee asked whether the President had the legal authority to suspend designation of an article as GSP under subsection 203(e)(6).¹² In this case, the President does not have such authority. The President may, for the purposes of taking action under section 203, proclaim an increase

of Footwear (Argentina—Safeguard Measures), WT/DS121/AB/R (Dec. 14, 1999), para. 130 and n.130 (finding that the phrase “is being imported” in Article 2.1 of the Safeguards Agreement implies that the relevant period for determining whether imports have caused injury is the most recent years). By implication, any safeguard measure imposed to remedy such injury must also be based on imports from the most recent data.

¹⁰ Only 1996 was lower, by a mere 0.1 percentage point. See Steel, Vol. II, Information Obtained in the Investigation (Carbon and Alloy Steel Flat, Long, and Tubular Products), , Inv. No. TA-201-73, USITC Pub. 3479 (Dec. 2001), at TUBULAR-35.

¹¹ See Prehearing Brief on Behalf of the Association of European Quality Flange Producers (Product 22), dated Oct. 29, 2001, Public Version, at 19.

¹² See 19 U.S.C. § 2253(e)(6).

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in “any duty on the imported article,” including suspension of GSP treatment.¹³

However, in order for the President to suspend GSP eligibility as a form of a duty increase, the Commission must have made a specific determination that serious injury found “results from” the designation of the products as GSP-eligible.¹⁴ As the Commission has not made such a separate injury finding with respect to GSP imports, the President does not, in fact, have the authority to suspend GSP eligibility in the form of a duty increase under subsection 203(e)(6).

Moreover, the Association believes that the suspension of duty exemptions currently applied to carbon and alloy steel flanges and fittings under the GSP program may conflict with obligations of the United States under the Safeguards Agreement. Article 2.1 of the Safeguards Agreement requires that safeguard measures be applied to a product “irrespective of its source.”¹⁵ This obligation has been interpreted to mean that safeguard measures must be applied to the imports from *all* sources from which imports were considered in the underlying investigation.¹⁶ The revocation of GSP would, in effect, impose safeguard measures only on certain “sources” of imports, not all sources as required by the Safeguards Agreement.

¹³ See 19 U.S.C. § 2253(a)(3)(A). Section 203(e)(6)(A)(ii) specifies that the suspension of designation of an article as GSP “shall be treated as an increase in duty.” 19 U.S.C. § 2253(e)(6)(A)(ii).

¹⁴ See 19 U.S.C. § 2253(e)(6)(B).

¹⁵ Safeguards Agreement, Art. 2.1.

¹⁶ See, e.g., *Argentina—Safeguard Measures*, para. 113. Although the President is prohibited from suspending GSP on imports of Product 22, the Association believes that a tariff increase of 5.5 percent on all imports would be an acceptable remedy.

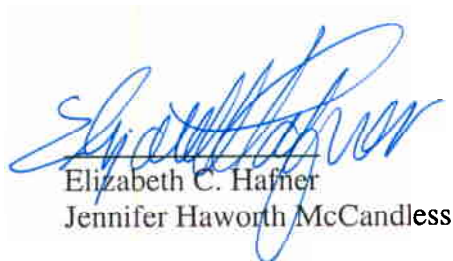
IV. No Information on the Inventory Level of Flanges from India Is Available

At the meeting, the Committee asked for information concerning an alleged “inventory overhang” of imported fittings, flanges, and tool joints. Because Association members generally sell to trading companies, and sell only flanges, not fittings or tool joints, they have no information regarding inventory levels in the United States.

V. Conclusion

For the foregoing reasons, as well as those included in the Association’s comments filed on January 4, 2002, we urge the President not to impose any trade restrictive measures on imports of flanges from India. There is no support in the record for any such measures, and, in particular not, for the 40 percent tariff increase suggested by the domestic producers. Additionally, as the President does not have the authority to withdraw GSP benefits in this case, such a withdrawal could conflict with the obligations of the United States under the Safeguards Agreement. However, if the President imposes import restrictions, an imposition of a 5.5 percent tariff increase on all imports of flanges, fittings, and tool joints would be acceptable to the Association.

Respectfully submitted,



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